

Our File No.: 73028-02/JWS/pat

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE PEREZ and ROSA PEREZ,

Plaintiffs,

-against-

GAETANO AMORE, FREEDOM RENTAL,
FREEDOM RENT A CAR, ROSEDALE DODGE,
INC. and BERGEN RENT A CAR, LLC,

Docket No.: 08CV02375

Defendants.

-----X

PLAINTIFFS' MEMORANDUM OF LAW

Plaintiffs submit this Memorandum of Law in support of their application for both an extension of time in which to serve defendant Gaetano Amore pursuant to CPLR § 306(b) and for leave to serve defense counsel on his behalf pursuant to CPLR § 308(5) and Federal Rule of Civil Procedure 4(e)(1). As is more fully set forth in the annexed Affidavit, plaintiff has made substantial efforts to locate and serve defendant Amore, but has thus far been unsuccessful. At best, Amore has failed to keep the appropriate motor vehicle and other authorities advised of his current address. At worst, he is deliberately evading service. Insofar as counsel is unwilling to accept service on his behalf, plaintiff has no choice but to seek leave of this

Court to so serve defendant. The only reason plaintiff is seeking leave to serve defendant via counsel, and not his insurance carrier as is normally the case, is that defendants are apparently self insured. Thus, serving defendant via defense counsel is analogous to well settled law allowing an aggrieved party to serve a party's insurance company when the party cannot be found. Plaintiff's extensive efforts to locate defendant are set forth in the annexed affidavit.

In Esposito v. Ruggeiro, 193 A.D.2d 713, 598 N.Y.S.2d 66 (2nd Dept. 1993), the Second Department permitted such service when it appeared defendant had indeed moved from the address set forth in the accident report with no forwarding address left. Similar results were had in Kroph v. King, 38 A.D.2d 327, 292 N.Y.S.2d 6 (2nd Dept. 1968), Solomon v. Horie Karate Dojo, 283A.D.2d 475, 724 N.Y.S.2d 648 (2nd Dept. 2001) and Beacom v. Mangone Homes Inc., 233 A.D.2d 470, 650 N.Y.S.2d 988 (2nd Dept. 1996). These cases are analogous to the situation here. Plaintiff cannot locate defendant, but can locate defendant's who insure him and counsel. There are no reasons proffered as to how or why defendants cannot accept service on Amore's behalf and defend him.

Based on the foregoing it is evident that plaintiff has made all reasonable efforts to serve defendant Amore. Since

defendant had, at most, an international driver's license, it is increasingly apparent that it is for all intents and purposes impossible for plaintiff to locate him. It is precisely this situation that justifies service on defense counsel and/or defendants themselves as they are both most likely and best suited to defend him and represent his best interests. The fact that defense counsel is equally unable to find him as the letter of April 28, 2008 so attests (Exhibit "G") only serves to bolster plaintiff's need for affirmative relief and leave to serve defense counsel and defendant on his behalf.

WHEREFORE, plaintiffs respectfully request that this Court issue an Order pursuant to CPLR § 306(b) enlarging the time in which plaintiff might effect service and for a further Order pursuant to CPLR § 308(5) and Federal Rule of Civil Procedure 4(e)(1) for permission to serve defense counsel on Amore's behalf, together with such other and further relief as to the Court may seem just and proper.

Dated: May 13, 2008
Newburgh, New York

Respectfully submitted,

FINKELSTEIN & PARTNERS
of Counsel to JACOBY & MEYERS
Attorneys for Plaintiffs

By: _____


JAMES W. SHUTTLEWORTH, III, ESQ.
of Counsel



EXHIBIT

FILE #73028-02-1/db

File COPY
DATE OF FILING: *10/9/07*
INDEX #: *301602/07*

Plaintiff designates
Bronx County
as the place of trial.

The basis of venue is:
Plaintiff(s) residence.

Plaintiff resides at:
2386 Walton Avenue
Bronx, New York
County of Bronx.

SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX

-----X
JOSE PEREZ and ROSA PEREZ,

Plaintiff(s),

-against-

SUMMONS

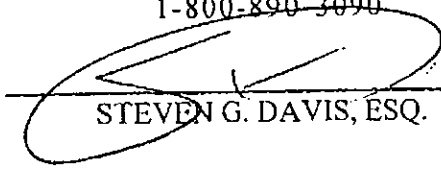
GAETANO AMORE, FREEDOM RENTAL, FREEDOM RENT A CAR,
ROSEDALE DODGE, INC. and BERGEN RENT A CAR, L.L.C.,

Defendant(s).

-----X
To the above named defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within -20- days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

JACOBY & MEYERS, LLP
Attorneys for Plaintiff(s)
c/o PROCESSING CENTER
436 Robinson Avenue
Newburgh, New York 12550
1-800-890-3090


STEVEN G. DAVIS, ESQ.

Dated: October 1, 2007.

DEFENDANT'S ADDRESS:
SEE VERIFIED COMPLAINT

CLERK
COUNTY OF
BRONX

07 OCT - 9 AM '07

RECEIVED

Bronx County Clerks Office
651 Grand Concourse
Bronx, NY 10451

Department: LAW
Transaction No 1053064
Plaintiff JOSE PEREZ AN
Defendant GAETANO AMOR
IndexNo 301602-2007
Type: CT

Amount Due:	\$210.00
Amount Rcvd	\$210.00
Change Due:	\$0.00

Date: 10/08/0
Time: 12:38 PM

File #73028-02-1/db

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BRONX

-----X
JOSE PEREZ and ROSA PEREZ,

Plaintiffs,

-against-

VERIFIED COMPLAINT

GAETANO AMORE, FREEDOM RENTAL,
FREEDOM RENT A CAR, ROSEDALE DODGE,
INC. and BERGEN RENT A CAR, L.L.C.,

Defendants.

-----X

Plaintiffs, by attorneys, JACOBY & MEYERS, LLP as and for the
Verified Complaint, herein allege the following:

AS AND FOR A FIRST CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, JOSE PEREZ

1. That at all times hereinafter mentioned, the plaintiffs were and still are residents of the County of Bronx, State of New York.
2. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, was and still is a resident of the County of Bergen, State of New Jersey.
3. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a domestic corporation organized and existing under and by virtue of

the Laws of the State of New York.

4. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a foreign corporation duly incorporated within the State of Minnesota.

5. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a foreign corporation authorized to do business in the State of New York.

6. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a business entity doing business within the State of New York.

7. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a domestic limited liability company organized and existing under and by virtue of the Laws of the State of New York.

8. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a foreign limited liability company duly incorporated within the State of Minnesota.

9. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a foreign limited liability company authorized to do business in the State of New York.

the Laws of the State of New York.

4. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a foreign corporation duly incorporated within the State of Minnesota.

5. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a foreign corporation authorized to do business in the State of New York.

6. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was and still is a business entity doing business within the State of New York.

7. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a domestic limited liability company organized and existing under and by virtue of the Laws of the State of New York.

8. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a foreign limited liability company duly incorporated within the State of Minnesota.

9. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a foreign limited liability company authorized to do business in the State of New York.

10. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was and still is a business entity doing business within the State of New York.

11. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.

12. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was and still is a foreign corporation duly incorporated within the State of New Jersey.

13. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was and still is a foreign corporation authorized to do business in the State of New York.

14. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was and still is a business entity doing business within the State of New York.

15. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.

16. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was and still is a foreign corporation duly incorporated within the State of New Jersey.

17. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was and still is a foreign corporation authorized to do business in the State of New York.

18. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was and still is a business entity doing business within the State of New York.

19. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was the titled owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

20. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was the registered owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

21. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was the lessee of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

22. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENTAL, was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

23. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was the titled owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

24. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was the registered owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

25. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was the lessee of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

26. That at all times hereinafter mentioned, upon information and belief, the defendant, FREEDOM RENT A CAR, was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

27. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was the titled owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

28. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was the registered owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for

the State of New Jersey.

29. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was the lessee of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

30. That at all times hereinafter mentioned, upon information and belief, the defendant, ROSEDALE DODGE, INC., was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

31. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the titled owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

32. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the registered owner of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

33. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the lessee of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

34. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

35. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, was the operator of the aforesaid motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

36. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, FREEDOM RENTAL.

37. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, FREEDOM RENT A CAR.

38. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, ROSEDALE DODGE, INC.

39. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and

34. That at all times hereinafter mentioned, upon information and belief, the defendant, BERGEN RENT A CAR, L.L.C., was the lessor of a 2005 Chevrolet motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

35. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, was the operator of the aforesaid motor vehicle, bearing License Plate #RYY68B, for the State of New Jersey.

36. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, FREEDOM RENTAL.

37. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, FREEDOM RENT A CAR.

38. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and knowledge of the defendant owner, ROSEDALE DODGE, INC.

39. That at all times hereinafter mentioned, upon information and belief, the defendant, GAETANO AMORE, operated the aforesaid motor vehicle with the express and/or implied permission, consent and

knowledge of the defendant owner, BERGEN RENT A CAR, L.L.C.

40. That at all times hereinafter mentioned, the plaintiff, JOSE PEREZ, was the operator of a 1998 Dodge motor vehicle, bearing License Plate #14022LA, for the State of New York, owned by one, Nice & Friendly Transport.

41. That on or about the 27th day of December, 2004, the plaintiff, JOSE PEREZ, operated the aforesaid motor vehicle while within the scope of his employment with on, Travel Well Transportation.

42. That at all times hereinafter mentioned, White Plains Road at intersection with Pelham Parkway, located in the Borough of Bronx, County of Bronx, State of New York, was and still is a public highway and thoroughfare and was the situs of the accident herein.

43. That on or about the 27th day of December, 2004, the aforementioned motor vehicles were in contact with each other.

44. The accident and resulting injuries were caused by the negligent, wanton, reckless and careless acts of the defendants herein.

45. That the defendants, and each of them, were negligent, wanton, reckless and careless in allowing, causing, and/or permitting their motor vehicle to come into contact with the plaintiff's motor vehicle; in failing to properly keep, control and maintain the motor vehicle so as to prevent the accident herein; in failing to keep the

motor vehicle under proper control; in failing to operate the motor vehicle in a manner and at a speed that was reasonable and proper under the prevailing traffic conditions; in failing to properly operate the braking and acceleration devices of the motor vehicle under the circumstances of the roadway where the accident occurred; in failing to keep a proper lookout; in failing to stop and/or slow down; in acting with reckless disregard for the safety of others; in failing to keep alert and attentive; in failing to properly apply brakes; in failing to sound horn; in failing to yield the right of way; in failing to obey traffic signs, signals and/or lights; and the defendants were in other ways negligent, wanton, reckless, and careless.

46. The limited liability provisions of C.P.L.R. 1601 do not apply pursuant to C.P.L.R. 1602(6) on the grounds that the defendants liability is based upon their use, operation and ownership of a motor vehicle or motorcycle and C.P.L.R. 1602(7) on the grounds that defendants acted with reckless disregard for the safety of others including the plaintiff herein.

47. That by reason of the foregoing, this plaintiff was caused to sustain severe and serious personal injuries to his mind and body, some of which, upon information and belief, are permanent with permanent effects of pain, disability, disfigurement and loss of body function. Further, this plaintiff was caused to expend and become

obligated for diverse sums of money as a result of this accident; and this plaintiff further was caused to lose substantial periods of time from his normal vocation and activities, and upon information and belief, may continue in that way into the future and suffer similar losses.

48. That this plaintiff sustained a serious injury, as defined in Subdivision (d) of Section 5102 of the Insurance Law of the State of New York and economic loss greater than basic economic loss, as defined in Subdivision (a) of Section 5102 of the Insurance Law of the State of New York.

49. That by reason of the foregoing, this plaintiff was damaged in a sum which exceeds the jurisdictional limits of all lower courts which would have jurisdiction of this matter.

AS AND FOR A SECOND CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, ROSA PEREZ

50. This plaintiff repeats, reiterates, and realleges each and every allegation contained in the paragraphs numbered '1' through '48' of the First Cause of Action, with the same force and effect as if more fully set forth herein at length.

51. That as a result of the aforementioned, this plaintiff, the lawful wedded spouse of the plaintiff in the First Cause of Action, has and will suffer the loss and impairment of the spouse's services,

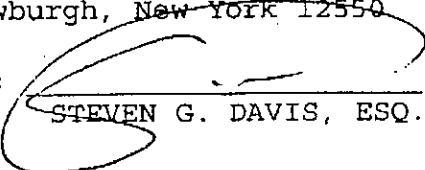
society and consortium, all to the damage of this plaintiff in a sum which exceeds the jurisdictional limits of all lower courts which would have jurisdiction of this matter.

WHEREFORE, plaintiffs demand judgment against the defendant(s) as follows:

(1) A sum which exceeds the jurisdictional limits of all lower courts which the jury would find to be fair, adequate and just in the First Cause of Action, and

(2) A sum which exceeds the jurisdictional limits of all lower courts which the jury would find to be fair, adequate and just in the Second Cause of Action, together with the costs and disbursements of this Action.

Yours, etc.,
JACOBY & MEYERS, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address
C/O Processing Center
436 Robinson Avenue
Newburgh, New York 12550

BY: 
STEVEN G. DAVIS, ESQ.

TO: FREEDOM RENTAL
FREEDOM RENT A CAR
Defendants
1187 Teaneck Road
Teaneck, New Jersey 07666

GAETANO AMORE
Defendant
43 Industrial Avenue
Fairview, New Jersey 07022

ROSEDALE DODGE, INC.
Defendant
2755 Long Lake Road
Roseville, Minnesota 55113

BERGEN RENT A CAR, L.L.C.
Defendant
1187 Teaneck Road
Teaneck, New Jersey 07666

STATE OF NEW YORK : COUNTY OF ORANGE

ss:

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and say that:

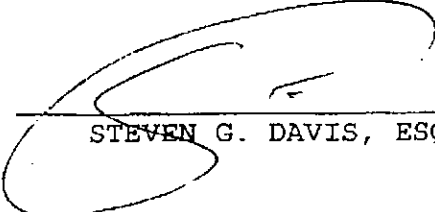
I am the attorney of record, or of counsel with the attorney(s) of record, for the plaintiff(s). I have read the annexed Verified Complaint, know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Facts and information contained in deponent's file. The reason I make this affirmation instead of the plaintiffs is because the plaintiffs reside outside of county where deponent maintains his office.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: October / , 2007.



STEVEN G. DAVIS, ESQ.

B

EXHIBIT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

73028-02
BIR

JOSE PEREZ AND ROSA PEREZ,

Plaintiff,

Index No.: 301602/07

-against-

VERIFIED ANSWER

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
RENT A CAR, ROSEDALE DODGE, INC. and
BERGEN RENT A CAR, LLC,

Defendants.

Defendants, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT A
CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC, by their attorneys,
WHITE FLEISCHNER & FINO, LLP, as and for their answer to the plaintiffs' verified
complaint, respectfully alleges:

**AS AND FOR DEFENDANTS' RESPONSE TO
PLAINTIFFS' FIRST CAUSE OF ACTION**

1. Denies each and every allegation set forth in paragraphs numbered "3", "7",
"8", "9", "10", "11", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24",
"25", "26", "44" and "45".
2. Denies knowledge and information sufficient to form a belief as to those
allegations set forth in paragraphs numbered "1", "40", "41" and "42".
3. Upon information and belief denies those allegations set forth in paragraphs
numbered "5", "6", "28", "29", "31", "34", "38" and "39".
4. Denies each and every allegation set forth in paragraphs numbered "12" except
admits that FREEDOM RENTAL, LLC, is a New Jersey corporation formed after December
27, 2004.

FILED
MAY 14 2008
CLERK OF COURT
COUNTY OF BRONX

5. Denies each and every allegation set forth in paragraphs numbered "30" except admits that ROSEDALE DODGE, INC., was the registered owner of a vehicle with New Jersey license plate RYY68B.

6. Denies each and every allegation set forth in paragraphs numbered "46", "47", "48" and "49, and leaves all matters of law to the honorable court.

**AS AND FOR DEFENDANTS' RESPONSE TO
PLAINTIFFS' SECOND CAUSE OF ACTION**

7. Defendants, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT A CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC, repeat(s) and reiterate(s) each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "49" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "50".

8. Denies each and every allegation set forth in paragraphs numbered "51".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. Pursuant to CPLR Article 16, the liability of defendants, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT A CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC, to the plaintiff herein for non-economic loss is limited to defendants', GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT A CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC's, equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. That by entering into the activity in which the plaintiff(s) was engaged at the

time of the occurrence set forth in the complaint, said plaintiff(s) knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff(s) herein as alleged in the complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiff(s) in his activities and such risks were assumed and accepted by him in performing and engaging in said activities.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

11. Plaintiff(s) have recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economical loss and any future such loss or expense will, with reasonable certainty, be replaced or indemnified in whole or in part from collateral sources. Any award made to plaintiff(s) shall be reduced in accordance with the provisions of CPLR 4545(c).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

12. Any damages sustained by the plaintiff(s) were caused by the culpable conduct of the plaintiff(s), including contributory negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiff(s), then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

13. This case shall be dismissed under the doctrine of Forum Non Conveniens.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

14. Whatever injuries and/or damages sustained by the plaintiff at the time and

place alleged in the complaint, were due to the acts of parties over whom the defendant was not obligated to exercise any control or supervision.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

15. That the Court herein does not have jurisdiction over the person of the defendants, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT A CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC, in that they were not properly served with the summons and complaint in the above action.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

16. Plaintiff failed to mitigate damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

17. That plaintiff(s) does not have a "serious injury" as defined in §5102 and §5104 et. seq. of the New York Insurance Law and is therefore barred from maintaining this action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

18. That the defendants, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT A CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC, exercised reasonable care in the ownership, maintenance and operation of the vehicle in question.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

19. The vehicle in question conformed with all applicable rules, regulations, laws, statutes, codes, standards and requirements formulated and/or in effect at the time of the alleged accident.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

20. That the plaintiffs failed to use safety devices, including but not limited to

seatbelts, that were available to the plaintiffs at the time of the events alleged in the plaintiffs' complaint and the plaintiffs' failure to use such devices was negligent and was a cause in whole or in part of the injuries sustained by plaintiffs.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

21. That plaintiff(s) injuries were caused in whole or in part by the failure of the operator of the host vehicle to properly restrain the plaintiff in said motor vehicle with a safety seat or belt, pursuant to Vehicle and Traffic Law §1229(c).

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

22. That the plaintiffs could with due diligence have obtained personal jurisdiction over tortfeasors not made parties to this lawsuit and thus the culpability of such missing or absent tortfeasors is to be apportioned into the total culpability allegedly causing the subject occurrence.

WHEREFORE, defendants, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT A CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC, by their attorneys, WHITE FLEISCHNER & FINO, LLP, demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York
January 2, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO LLP

By:



DANIEL M. STEWART

Attorneys for Defendants
61 Broadway, 18th Floor
New York, New York 10006
(212) 487-9700

Our File No.: 117-13119-D-DMS/ODR

TO: (See Attached Affidavit)

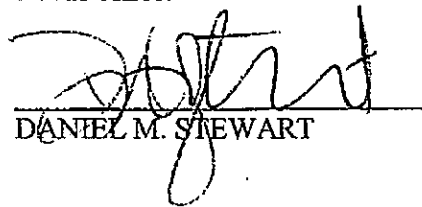
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

DANIEL M. STEWART, being duly sworn, deposes and says:

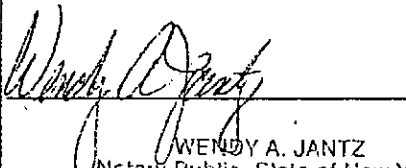
That he is the attorney for the defendants in the within action; that he has read the within Answer and knows the contents thereof, and that same is true to his own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the sources of his information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendant(s) is that the defendants are not within the county where deponent has his office.


DANIEL M. STEWART

Sworn to before me this
2nd day of January, 2008


WENDY A. JANTZ
Notary Public, State of New York
No. 01JA5006412
Qualified in Richmond County
Commission Expires January 23, 2011

C

EXHIBIT

File #73028-02-1/lfp

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BRONX

-----X
JOSE PEREZ and ROSA PEREZ,

Plaintiff,

-against-

VERIFIED BILL OF
PARTICULARS
INDEX NO: 301602/07

GAETANO AMORE, FREEDOM RENTAL, FREEDOM RENT
A CAR, ROSEDALE DODGE,
INC. and BERGEN RENT A CAR, L.L.C.,

Defendants.

-----X

Plaintiff, by attorneys, JACOBY & MEYERS, LLP as and for the
Verified Bill of Particulars, herein alleges, upon information and
belief, the following:

1. The date of birth of the plaintiff, JOSE PEREZ, was February
9, 1976. The social security number of the plaintiff, JOSE PEREZ, is
584-35-7619. The address of the plaintiff, JOSE PEREZ, is 2386
Walton Avenue, Apt. 5-G, Bronx, New York 10468.

2. The accident occurred on or about the 27th day of December,
2004 at approximately 10:53 A.M. The remainder of the request herein
is not properly the subject of a Demand for Bill of Particulars.

3. The accident occurred on White Plains Road at intersection with Pelham Parkway, located in the Borough of Bronx, County of Bronx, State of New York. Upon information and belief, the manner in which the accident occurred was that the defendants negligently, wantonly, recklessly and carelessly caused their motor vehicle to come into contact with the motor vehicle of the plaintiff.

4. The accident occurred on White Plains Road at intersection with Pelham Parkway, located in the Borough of Bronx, County of Bronx, State of New York. Upon information and belief, the motor vehicle of the defendants, FREEDOM RENTAL and GAETANO AMORE, was proceeding in a northerly direction and the motor vehicle of the plaintiff, JOSE PEREZ, was proceeding in an easterly direction. Upon information and belief, the front-end of the motor vehicle of the plaintiff, JOSE PEREZ, came into contact with the front-driver side of the motor vehicle of the defendants.

5. Not applicable.

6. That the defendants, and each of them, were negligent, wanton, reckless and careless in allowing, causing, and/or permitting their motor vehicle to come into contact with the plaintiff's motor vehicle; in failing to properly keep, control and maintain the motor vehicle so as to prevent the accident herein; in failing to keep the motor vehicle under proper control; in failing to operate the motor

vehicle in a manner and at a speed that was reasonable and proper under the prevailing traffic conditions; in failing to properly operate the braking and acceleration devices of the motor vehicle under the circumstances of the roadway where the accident occurred; in failing to keep a proper lookout; in failing to stop and/or slow down; in acting with reckless disregard for the safety of others; in failing to keep alert and attentive; in failing to properly apply brakes; in failing to sound horn; in failing to yield the right of way and in failing to obey traffic signs, signals and/or lights.

7. The defendants violated sections 1101, 1180a, 1180e, 1212 and 111d of Title III and Title VII of the Vehicle and Traffic Law of the State of New York and other such rules, regulations, statutes and ordinances which the Court may take judicial notice of at trial.

8. The plaintiff, JOSE PEREZ, sustained the following injuries:

COMMUNUTED FRACTURE THROUGH THE UPRA-ACETABULAR
ILIAC BONE, EXTENDING TO THE ROOF AND
POSTERIOR COLUMN OF THE RIGHT ACETABULUM;
POSSIBLE FRACTURE OF THE ACETEBULAR COMPONENT,
RIGHT HIP;
SPRAIN RIGHT HIP;
RIGHT HIP DYSPLASIA;
DISPLACEMENT OF ACETABULAR CUP, WITH GAP BETWEEN
ACETABULAR CUP AND MEDIAL WALL OF ACETABULUM
MEASURING 1.3 CM;
LINEAR DEFECT IN RIGHT ACETABULAR HIP;
LUCENCIES THROUGHOUT THE RIGHT ACETABULUM;
TRAUMATIC TROCHANTERIC BURSITIS, RIGHT HIP;
TENDINITIS, RIGHT HIP;
OSTEOPHYTE, RIGHT HIP;

PERMANENT SIGNIFICANT SCARRING AND DISFIGUREMENT
SECONDARY TO (1) REMOVAL OF HARDWARE,
TROCHANTERIC CLAW AND FALL-MILES CABLES OF
RIGHT HIP (2) EXCISION OF OSTEOPHYTE FROM
RIGHT GREATER TROCHANTER OF RIGHT HIP,
PERFORMED 7/25/05;
AGGRAVATION, ACTIVATION AND/OR EXACERBATION OF A
PRIOR RIGHT HIP INJURY/SURGERY;
FUTURE ARTHRITIS IS EXPECTED AT OR NEAR FRACTURE;
ACCOMPANYING SEVERE PAIN, SWELLING AND
TENDERNESS;
RESTRICTION OF MOTION;
SEVERE PAIN ON MOVEMENT AND PALPATION;
PERMANENT DISABILITY;

Note, that due to the injuries sustained in this accident, the
plaintiff was caused to crutches for an extensive period of time,
thereby suffering the following additional injuries:

THORACIC SPINE SPRAIN AND/OR STRAIN;
LUMBAR SPINE SPRAIN AND/OR STRAIN;
ACCOMPANYING SEVERE PAIN, SWELLING AND
TENDERNESS;
RESTRICTION OF MOTION;
SEVERE PAIN ON MOVEMENT AND PALPATION;

SPRAIN AND/OR STRAIN RIGHT SHOULDER;
ACCOMPANYING SEVERE PAIN, SWELLING AND
TENDERNESS;
RESTRICTION OF MOTION;
SEVERE PAIN ON MOVEMENT AND PALPATION;

TEAR OF THE POSTERIOR HORN OF THE MEDIAL MENISCUS
OF LEFT KNEE, EXTENDING TO THE INFERIOR
ARTICULAR SURFACE;
TEAR OF THE MEDIAL COLLATERAL LIGAMENT OF LEFT
KNEE;
SPRAIN AND/OR STRAIN BILATERAL KNEES;

LATERAL SHIFT OF PATELLA WITH ARTHROSIS AND
CHONDROMALACIA OF LEFT KNEE;
JOINT EFFUSION, LEFT KNEE;
CHRONIC MYALGIA IS EXPECTED AT OR NEAR TEAR;
ACCOMPANYING SEVERE PAIN, SWELLING AND
TENDERNESS;
RESTRICTION OF MOTION;
SEVERE PAIN ON MOVEMENT AND PALPATION;
PERMANENT DISABILITY;

HEADACHES;

The plaintiff, JOSE PEREZ, will claim that the following
injuries are permanent and progressive:

COMMINUTED FRACTURE THROUGH THE SUPRA-ACETABULAR
ILIAC BONE, EXTENDING TO THE ROOF AND
POSTERIOR COLUMN OF THE RIGHT ACETABULUM;
POSSIBLE FRACTURE OF THE ACETABULAR COMPONENT,
RIGHT HIP;
TEAR OF THE POSTERIOR HORN OF THE MEDIAL MENISCUS
OF LEFT KNEE, EXTENDING TO THE INFERIOR
ARTICULAR SURFACE;
TEAR OF THE MEDIAL COLLATERAL LIGAMENT OF LEFT
KNEE;
DISPLACEMENT OF ACETABULAR CUP, WITH GAP BETWEEN
ACETABULAR CUP AND MEDIAL WALL OF ACETABULUM
MEASURING 1.3 CM;
LATERAL SHIFT OF PATELLA WITH ARTHROSIS AND
CHONDROMALACIA OF LEFT KNEE;
PERMANENT SIGNIFICANT SCARRING AND DISFIGUREMENT
SECONDARY TO (1) REMOVAL OF HARDWARE,
TROCHANTERIC CLAW AND FALL-MILES CABLES OF
RIGHT HIP (2) EXCISION OF OSTEOPHYTE FROM
RIGHT GREATER TROCHANTER OF RIGHT HIP,
PERFORMED 7/25/05;
ACCOMPANYING SEVERE PAIN, SWELLING AND
TENDERNESS;
RESTRICTION OF MOTION;
SEVERE PAIN ON MOVEMENT AND PALPATION;

9. The plaintiff, JOSE PEREZ, was confined to Jacobi Medical Center, 1400 Pelham Parkway South, Room 1N54A, Bronx, New York 10461, on December 27, 2004 for emergency and x-ray treatment on an outpatient basis. In addition, the plaintiff was confined to Hospital for Joint Disease, 301 East 17th Street, New York, New York 10003, July 25, 2005 through July 27, 2005 for surgery on an inpatient basis. Following the date of the accident, the plaintiff, JOSE PEREZ, was confined to bed for a period of approximately 2 weeks and there after intermittently confined to home through July 25, 2005. In addition, the plaintiff was confined to bed for a period of approximately 2 weeks following the date of his surgery, and there after intermittently confined to home through approximately October 2006.

10. - 12. The plaintiff, JOSE PEREZ, has been treated by the following physicians and healthcare providers to date:

DONALD ROSE, MD
1095 Park Avenue
New York, New York 10128
8/15/05 - 1/7/08

NYU HOSPITAL FOR JOINT DISEASE
301 East 17th Street
Suite 200
New York, New York 10003
7/25/05 - 7/27/05

WILLIAM L. JAFFE, MD
1095 Park Avenue
New York, New York 10128
1/4/05 - 9/27/06

JACOBI MEDICAL CENTER
1400 Pelham Parkway South
Bronx, New York 10461
12/27/04

The plaintiff has treated with physicians and healthcare providers on numerous occasions, however, the exact dates of treatment are unknown.

13. The plaintiff, JOSE PEREZ, is claiming an aggravation, activation and/or exacerbation of a prior hip injury which occurred due to a worker's compensation accident in 1995. The plaintiff underwent a total hip replacement in 1995. The plaintiff treated with Jacobi Medical Center and William L. Jaffe, MD for this prior injury/surgery.

14. - 15. At the time of the accident, the plaintiff, JOSE PEREZ, was employed by Travel Wells Transportation, located at 1600 Pelham Parkway South, Bronx, New York 10461, earning the approximate sum of \$860.00 per week. The plaintiff, JOSE PEREZ, was incapacitated from employment from December 27, 2004 through approximately October 2006, thereby claiming lost earnings in the approximate sum of \$79,120.00.

It is further claimed that these injuries will limit the plaintiff's ability to maintain employment and secure future employment throughout the course of his lifetime, as well as, limit plaintiff's future earning potential and ability to secure any fringe benefit packages available with said future employment.

16. The plaintiff, JOSE PEREZ, began employment with Pepsi Bottle Company, located at 112-02 15th Avenue, College Point, New York 11356, as a Hi-Lo Lift Operator, earning the approximate sum of \$900.00 per week on October 2, 2006.

17. - 18. Special damages ascertainable to date and continuing for plaintiff, JOSE PEREZ, are as follows:

HOSPITAL	-approx-	\$15,546.32
----------	----------	-------------

JACOBI MEDICAL CENTER
1400 Pelham Parkway South
Room 1N54A
Bronx, New York 10461
12/27/04

NYU HOSPITAL FOR JOINT DISEASE
301 East 17th Street
Suite 200
New York, New York 10003
7/25/05 - 7/27/05

PHYSICIANS SERVICES	-approx-	\$ 4,228.66
---------------------	----------	-------------

DONALD ROSE, MD
1095 Park Avenue
New York, New York 10128
8/15/05 - 1/7/08

WILLIAM L. JAFFE, MD
1095 Park Avenue
New York, New York 10128
1/4/05 - 9/27/06

Plaintiff reserves the right to claim any additional special damages that may arise and or become known.

19. - 20. The plaintiff, JOSE PEREZ, is claiming an aggravation, activation and/or exacerbation of a prior hip injury which occurred due to a worker's compensation accident in 1995. The plaintiff underwent a total hip replacement in 1995. The plaintiff treated with Jacobi Medical Center and William L. Jaffe, MD for this prior injury/surgery. The remainder of this request is unknown at this time.

21. See paragraphs numbered "17. & 18." hereinabove.

22. - 24. Defendant's entitlement to Collateral Source information is established by CPLR Sec. 4545. This information is evidentiary and is not properly the subject of a Bill of Particulars, but, should be a discovery request. This information will be provided under separate cover.

25. - 26. The plaintiff, JOSE PEREZ, is not making a claim for property damage.

27. - 28. The marital status of the plaintiff, JOSE PEREZ, is married. The plaintiff's wife, plaintiff, ROSA PEREZ, resides at 2386 Walton Avenue, Apt. 5-G, Bronx, New York 10468.

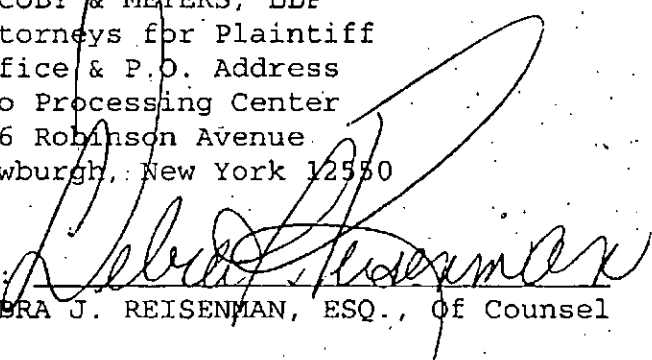
29. The usual services performed by the plaintiff, JOSE PEREZ, for the plaintiff, PEREZ ROSA, consisted of providing support and maintenance of the household, upkeep of children, household duties, love, comfort, companionship, society and conjugal relations. The plaintiff, ROSA PEREZ, has been deprived of the usual services performed by the plaintiff, JOSE PEREZ, intermittently from the date of this accident up to the present time, and continuing.

PLEASE TAKE NOTICE that all of the above particulars are
furnished as of and to the date hereof.

Dated: March 4, 2008.

Yours, etc.,

JACOBY & MEYERS, LLP
Attorneys for Plaintiff
Office & P.O. Address
c/o Processing Center
436 Robinson Avenue
Newburgh, New York 12550

BY: 
DEBRA J. REISENMAN, ESQ., Of Counsel

TO: WHITE, FLEISCHNER & FINO, LLP
Attorneys for Defendants
OFFICE & P.O. ADDRESS
61 BROADWAY, 18TH FLOOR
NY, NY 10006

STATE OF NEW YORK : COUNTY OF ROCKLAND

ss:

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and say that:

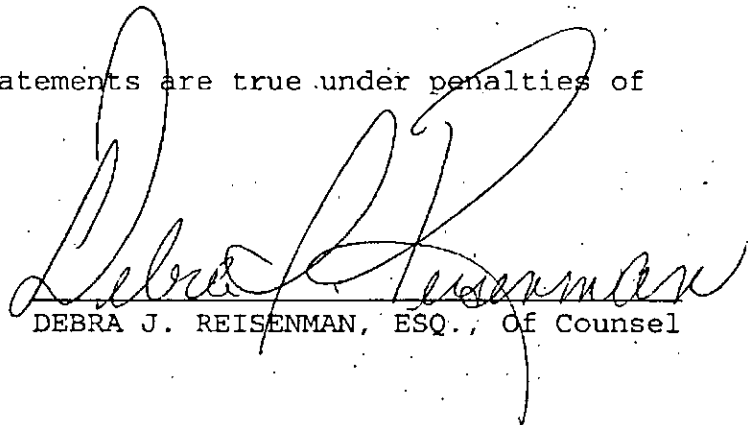
I am the attorney of record, or of counsel with the attorney(s) of record, for the plaintiff. I have read the annexed Verified Bill of Particulars know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Facts and information contained in deponent's file. The reason I make this affirmation instead of the plaintiff is because the plaintiff resides outside of county where deponent maintains his office.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: March 4, 2008.



DEBRA J. REISENMAN, ESQ., Of Counsel

STATE OF NEW YORK
COUNTY OF ORANGE

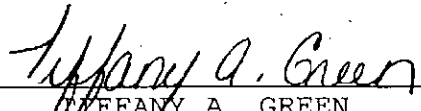
ss:

TIFFANY A. GREEN, being duly sworn says: I am not a party to the action, am over 18 years of age and reside at Central Valley, New York.

On March 5, 2008, I served a copy of the annexed Verified Bill of Particulars in the following manner:

By mailing same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U. S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

WHITE FLEISCHNER & FINO, LLP
Attorneys for Defendants
Office & P. O. Address
61 Broadway - 18th Floor
New York, New York 10006


TIFFANY A. GREEN

Sworn to before me on

March 5, 2008.


NOTARY PUBLIC

DANA M. BROAS
Notary Public, State Of New York
Qualified In Orange County
Registration # 01BR6092611
Commission Expires May 27, 2011

D

EXHIBIT

Page 1 of 1 Pages

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT (NYC)
MV-104AN (7/01)# 73028
SSR/CKL/BLRPrecinct 049
Accident No. 2368

Complaint Number

☐ AMENDED REPORT

1	Accident Date Month Day Year 12 27 2004	Day of Week Mon	Hour/Time 1053	No. of Vehicles 2	No. Injured 1	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/>
2	VEHICLE 1 Vehicle ID Number 505910906 Driver Name - exactly as printed on license PEREZ, JOSE Address (Include Number & Street) 2400 Walton Ave City/Town Bronx State NY Zip Code 10468			VEHICLE 2 Vehicle ID Number NA3644679 (INT-DL) Driver Name - exactly as printed on license Gaetano, Andre Address (Include Number & Street) 443 Industrial Ave City/Town Fairview State NJ Zip Code 07022					
3	Date of Birth Month Day Year 02/19/70 m Sex m Unlicensed <input type="checkbox"/> No. of Occupants 1 Public Property Damaged <input type="checkbox"/>			Date of Birth Month Day Year 02/17/70 m Sex m Unlicensed <input type="checkbox"/> No. of Occupants 1 Public Property Damaged <input type="checkbox"/>					
4	Name - exactly as printed on registration Nice & Friendly Transp. Address (Include Number & Street) 234 Broadway City/Town Newburgh State NY Zip Code 12550			Name - exactly as printed on registration Freedom Rental Address (Include Number & Street) 1187 Teaneck Rd City/Town Teaneck State NJ Zip Code 07666					
5	Plate Number 140224 NY State of Reg. Vehicle Year & Make 98 Dodge SUBN			Plate Number KY683 NJ State of Reg. Vehicle Year & Make SUBN					
6	Ticket/Arrest Number(s)			Ticket/Arrest Number(s)					
7	Violation Section(s)			Violation Section(s)					
8	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit. VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes Vehicle By Towed: To N/A			Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit. VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes Vehicle By Towed: To N/A			Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles. Rear End 1. Left Turn 3. Right Angle 5. Right Turn 7. Head On 9. Overtaking 2. Left Turn 4. Right Turn 6. Sideswipe 8. ACCIDENT DIAGRAM #4		
9	VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER			Place Where Accident Occurred: <input checked="" type="checkbox"/> BRONX <input type="checkbox"/> KINGS <input type="checkbox"/> NEW YORK <input type="checkbox"/> QUEENS <input type="checkbox"/> RICHMOND Road on which accident occurred White Plains Road at (1) intersecting street Pelham PKWY (Route Number or Street Name) (or 2) _____ (Route Number or Street Name) (If most, nearest intersecting Road Number or Street Name)			Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input type="checkbox"/> Yes <input type="checkbox"/> No		
10	Accident Description/Officer's Notes: AT 11:10 Veh #1 stated he was going E/B on Pelham PKWY/ when veh #2 who was going W/B on White Plains Rd came out of rd where causing the vehicles to collide. Veh #2 states he doesn't remember what happened.								

ALL INVOLVED	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death On
A	1	1	4	1	08 m	-	-	6	200	1053	Perez, Jose				
B	2	1	4	1	31 m	-	-	6	-	-	Gaetano, Andre				
C															
D															
E															
F															

Officer's Rank and Signature	Tax ID No.	NCIC No.	Precinct	Post/Sector	Reviewing Officer	Date/Time Reviewed
JOSE PEREZ	03030		049			

PERSONS KILLED OR INJURED IN ACCIDENT (Letter designation of persons killed or injured must correspond with letter designation on front).

A Last Name <u>Perez</u>		First <u>Jose</u>		M.I. <u>K</u>		D Last Name <u>First</u>		M.I. <u>M.I.</u>	
Address <u>2400 Walton Ave #4H BX NY 10468</u>						Address			
Date of Birth Month <u>02</u> Day <u>09</u> Year <u>70</u>		Telephone (Area Code) <u>718</u> <u>367</u> <u>7566</u>				Date of Birth Month <u> </u> Day <u> </u> Year <u> </u>		Telephone (Area Code) (<u> </u>) <u> </u> <u> </u> <u> </u>	
B Last Name <u> </u>		First <u> </u>		M.I. <u> </u>		E Last Name <u> </u>		M.I. <u> </u>	
Address <u> </u>						Address <u> </u>			
Date of Birth Month <u> </u> Day <u> </u> Year <u> </u>		Telephone (Area Code) (<u> </u>) <u> </u> <u> </u> <u> </u>				Date of Birth Month <u> </u> Day <u> </u> Year <u> </u>		Telephone (Area Code) (<u> </u>) <u> </u> <u> </u> <u> </u>	
C Last Name <u> </u>		First <u> </u>		M.I. <u> </u>		Highway Dist. at Scene? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Address <u> </u>						Name: <u> </u>			
Date of Birth Month <u> </u> Day <u> </u> Year <u> </u>		Telephone (Area Code) (<u> </u>) <u> </u> <u> </u> <u> </u>				Shield No. <u> </u>			

ENTER INSURANCE POLICY NUMBER FROM INSURANCE IDENTIFICATION CARD, EXPIRATION DATE (IN ALL CASES), AND VIN.

Vehicle No. 1 <u>CNYP00019798795</u>	Vehicle No. 2 <u> </u>
Expiration Date <u>10/1/05</u>	Expiration Date <u>Freedom Rental Inc</u>
VIN <u>2B5WB35Y7WK161787</u>	VIN <u> </u>

WITNESS (Attach separate sheet, if necessary)

Name <u> </u>	Address <u> </u>	Phone <u> </u>
-------------------	----------------------	--------------------

DUPLICATE COPY REQUIRED FOR:

- ☐ Dept. of Motor Vehicles (if anyone is killed/injured)
 ☐ Motor Transport Division (P.D. vehicle involved)
 ☐ NYC Taxi & Limousine Comm. (if a Licensed taxi or limousine involved)
 ☐ Other City Agency (Specify)
- ☐ Office of Comptroller (if a City vehicle involved)
 ☐ Personnel Safety Unit (if a P.D. vehicle involved)
 ☐ Highway Unit

NOTIFICATIONS: (Enter name, address, and relationship of friend or relative notified. If aided person is unidentified, list Missing Person Squad member who was notified. In either case, give date and time of notification.)

PROPERTY DAMAGED (other than vehicles)

OWNER OF PROPERTY (include city agency, where applicable)

IF NYPD VEHICLE IS INVOLVED:

Police Vehicle-Operator's First Name <u> </u>		Last Name <u> </u>		Rank <u> </u>	Shield No. <u> </u>	Tax ID. No. <u> </u>	Command <u> </u>
Make of Vehicle <u> </u>	Year <u> </u>	Type of Vehicle <u> </u>	Plate No. <u> </u>	Dept. Vehicle No. <u> </u>		Assigned To What Command <u> </u>	
Equipment in Use At Time of Accident							
<input type="checkbox"/> Siren <input type="checkbox"/> Horn <input type="checkbox"/> Turn Light <input type="checkbox"/> 4-Way Flasher <input type="checkbox"/> High-Level Warning Lights <input type="checkbox"/> Traffic Cones <input type="checkbox"/> Headlights							

ACTIONS OF POLICE VEHICLE

- ☐ Responding to Code Signal
 ☐ Pursuing Violator
 ☐ Other (Describe)
- ☐ Complying with Station House Directive
 ☐ Routine Patrol

E

EXHIBIT

WHITE FLEISCHNER & FINO, LLP

61 BROADWAY, NEW YORK, NY 10006
T212.487.9700 F212.487.9777 WWW.WFF-LAW.COM

March 10, 2008

7302802

Attn: County Clerk
Bronx Supreme Court
851 Grand Concourse
Bronx, New York 10451

Re: Perez, Jose and Rosa v. Gactano Amore, Freedom Rental, Freedom Rent A Car,
Rosdale Dodge, Inc. and Bergen Rent A Car, LLC
Insured: Freedom Rentals LLC
DOL: December 27, 2004
Our File No.: 117-13119-D-DMS/ODR
Handling Attorneys: Daniel M. Stewart and Olivia D. Rosario

Dear Sir/Madam:

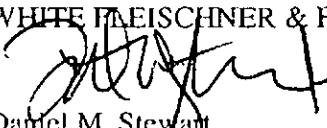
Please be advised that the above matter presently pending under Index No. 301602/07 has been formally removed to the United States District Court, Southern District under Federal Docket No. 08CV02375 and has been assigned to Judge Berman. I am enclosing a copy of the Notice of Removal for your review.

We are respectfully requesting that the matter and file be transferred to the United States District Court, Judge Berman for further handling.

If you have any questions please do not hesitate to let me know.

Very truly yours,

WHITE FLEISCHNER & FINO, LLP


Daniel M. Stewart
dstewart@wff-law.com

DMS/afr

cc: Steven G. Davis, Esq.
Jacoby & Meyers, LLP
c/o Processing Center
436 Robinson Avenue
Newburgh, New York 12350
(800) 890-3090

A NEW YORK LIMITED LIABILITY PARTNERSHIP

HOLMDEL, NEW JERSEY • WHITE PLAINS, NEW YORK • GARDEN CITY, NEW YORK
PHILADELPHIA, PENNSYLVANIA • BOCA RATON, FLORIDA
LONDON, ENGLAND

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

08 CV 02375

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

DEFENDANTS

Jose Perez and Rosa Perez
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Gaetano Amore, Freshman Rental
ATTORNEYS (IF KNOWN)

Jacoby & Hayes
426 Robinson Avenue
Verburgh, NY 12350

White-Herschner & Fink
101 Broadway, 18th Floor
NY, NY 10006 (212) 487-4700

MAR 07 2008

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

38 U.S.C. 1332 - Complete diversity of parties

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☒ Yes ☐ If yes, give date & Case No.

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
		PERSONAL INJURY		PERSONAL INJURY		PROPERTY RIGHTS		PROPERTY RIGHTS	
[] 110 INSURANCE	[] 310 AIRPLANE	[] 382 PERSONAL INJURY - MED MALPRACTICE	[] 610 AGRICULTURE	[] 422 APPEAL	[] 400 STATE REAPPORTIONMENT				
[] 120 MARINE	[] 315 AIRPLANE PRODUCT LIABILITY	[] 385 PERSONAL INJURY PRODUCT LIABILITY	[] 620 FOOD & DRUG	28 USC 158	[] 410 ANITRUST				
[] 130 MILLER ACT	[] 320 ASSAULT, LIBEL & SLANDER	[] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	[] 625 DRUG RELATED SEIZURE OF PROPERTY	[] 423 WITHDRAWAL 28 USC 157	[] 430 BANKS & BANKING				
[] 140 NEGOTIABLE INSTRUMENT	[] 330 FEDERAL EMPLOYERS' LIABILITY		[] 630 LIQUOR LAWS		[] 450 COMMERCE/RATES/ETC				
[] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	[] 340 MARINE	PERSONAL PROPERTY	[] 640 RR & TRUCK		[] 460 DEPORTATION				
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT LIABILITY	[] 370 OTHER FRAUD	[] 650 AIRLINE REGS	[] 820 COPYRIGHTS	[] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)				
[] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	[] 350 MOTOR VEHICLE	[] 371 TRUTH IN LENDING	[] 660 OCCUPATIONAL SAFETY/HEALTH	[] 830 PATENT	[] 480 CONSUMER CREDIT				
[] 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	[] 355 MOTOR VEHICLE PRODUCT LIABILITY	[] 380 OTHER PERSONAL PROPERTY DAMAGE PRODUCT LIABILITY	[] 690 OTHER	[] 840 TRADEMARK	[] 490 CABLE/SATELLITE TV				
[] 155 STOCKHOLDERS SUITS	[] 360 OTHER PERSONAL INJURY		LABOR	SOCIAL SECURITY	[] 510 SELECTIVE SERVICE				
[] 190 OTHER CONTRACT			[] 710 FAIR LABOR STANDARDS ACT	[] 861 MIA (1395FF)	[] 550 SECURITIES/COMMODITIES/EXCHANGE				
[] 195 CONTRACT PRODUCT LIABILITY			[] 720 LABOR/MGMT RELATIONS	[] 862 BLACK LUNG (923)	[] 585 CUSTOMER CHALLENGE				
[] 196 FRANCHISE			[] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT	[] 863 DWC (405(g))	12 USC 3410				
			[] 740 RAILWAY LABOR ACT	[] 864 SSID TITLE XVI	[] 610 AGRICULTURE ACTS				
			[] 750 OTHER LABOR LITIGATION	[] 865 RSI (405(g))	[] 620 ECONOMIC STABILIZATION ACT				
			[] 791 EMP RET INC SECURITY ACT	FEDERAL TAX SUITS	[] 630 ENVIRONMENTAL MATTERS				
				[] 870 TAXES	[] 640 ENERGY ALLOCATION ACT				
				[] 871 IRS-THIRD PARTY 20 USC 7609	[] 650 FREEDOM OF INFORMATION ACT				
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			[] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE				
[] 210 LAND CONDEMNATION	[] 441 VOTING	[] 510 MOTIONS TO VACATE SENTENCE 28 USC 2256			[] 950 CONSTITUTIONALITY OF STATE STATUTES				
[] 220 FORECLOSURE	[] 442 EMPLOYMENT	[] 530 HABEAS CORPUS			[] 890 OTHER STATUTORY ACTIONS				
[] 230 RENT LEASE & EJECTMENT	[] 443 HOUSING ACCOMMODATIONS	[] 535 DEATH PENALTY							
[] 240 TORTS TO LAND	[] 444 WELFARE	[] 540 MANDAMUS & OTHER							
[] 248 TORT PRODUCT LIABILITY	[] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	[] 550 CIVIL RIGHTS							
[] 290 ALL OTHER REAL PROPERTY	[] 446 AMERICANS WITH DISABILITIES - OTHER	[] 555 PRISON CONDITION							
	[] 440 OTHER CIVIL RIGHTS								

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☐ 1 Original Proceeding ☒ 2a. Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court
AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> <input type="checkbox"/>	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input type="checkbox"/> <input type="checkbox"/>	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF <input type="checkbox"/> <input checked="" type="checkbox"/>
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> <input checked="" type="checkbox"/>	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> <input type="checkbox"/>	FOREIGN NATION	<input type="checkbox"/> <input type="checkbox"/>

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Rosa and Jose Perez
2386 Walton Avenue
Bronx NY

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Andre Gaetano
43 Industrial Avenue
Fairview NJ 07030

Freedom Berthal
1187 Teareck Road
Teareck NJ 07066

Rosedale Dodge Inc.
2755 Long Lake Road
Roseville, Minnesota 55213
Bergen Rent A Car LLC
1187 Teareck Road
Teareck NJ 07066

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE
2/29/08

SIGNATURE OF ATTORNEY OF RECORD



RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO
☒ YES (DATE ADMITTED Mo. 10 Yr. 97)
Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ Is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Judge ~~Vermon~~

11/19/08 119-D-DMS/ODR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV 02375

JOSE PEREZ AND ROSA PEREZ,

Plaintiffs,

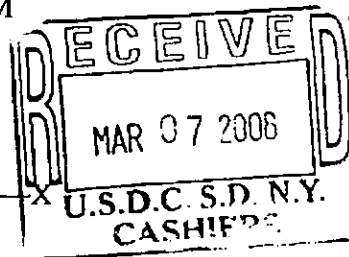
Index No.:

-against-

RULE 7.1 STATEMENT

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
RENT A CAR, ROSEDALE DODGE, INC. and
BERGEN RENT A CAR, LLC,

Defendants.



Defendants, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT
A CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC, by their attorneys,
WHITE, FLEISCHNER & FINO, LLP, as and for his Rule 7.1 Statement hereby states as
follows:

1. Upon information and belief, Freedom Rental d/b/a Freedom Rent A Car is a New Jersey business with its principal place of business in the State of New Jersey.
2. Upon information and belief Rosedale Dodge, Inc., is a Minnesota corporation with its principal place of business in the State of Minnesota.
3. Upon information and belief defendant Bergen Rent A Car, LLC, is a New Jersey corporation with its principal place of business in the state of New Jersey.
4. Upon information and belief defendant ANDRE GAETANO resides at 43 Industrial Avenue, Fairview, New Jersey 07022.
5. Freedom Rental, d/b/a Freedom Rent A Car, Rosedale Dodge, Inc., and Bergen Rent A Car, LLC are not owned by a parent corporation. There is no publicly held

117-13119-D-DMS/ODR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE PEREZ AND ROSA PEREZ,

Plaintiffs,

Index No.:

-against-

RULE 7.1 STATEMENT

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
RENT A CAR, ROSEDALE DODGE, INC. and
BERGEN RENT A CAR, LLC,

Defendants.

Defendants, GAETANO AMORE, FREEDOM RENTAL, d/b/a FREEDOM RENT
A CAR, ROSEDALE DODGE, INC., and BERGEN RENT A CAR, LLC, by their attorneys,
WHITE, FLEISCHNER & FINO, LLP, as and for his Rule 7.1 Statement hereby states as
follows:

1. Upon information and belief, Freedom Rental d/b/a Freedom Rent A Car is a New Jersey business with its principal place of business in the State of New Jersey.
2. Upon information and belief Rosedale Dodge, Inc., is a Minnesota corporation with its principal place of business in the State of Minnesota.
3. Upon information and belief defendant Bergen Rent A Car, LLC. is a New Jersey corporation with its principal place of business in the state of New Jersey.
4. Upon information and belief defendant ANDRE GAETANO resides at 43 Industrial Avenue, Fairview, New Jersey 07022.
5. Freedom Rental, d/b/a Freedom Rent A Car, Rosedale Dodge, Inc., and Bergen Rent A Car, LLC are not owned by a parent corporation. There is no publicly held


corporation that owns 10% or more stocks of Freedom Rental, d/b/a Freedom Rent A Car, Rosedale Dodge, Inc., and Bergen Rent A Car, LLC, upon information and belief.

Dated: New York, New York
March 4, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO, LLP

By:


Daniel M. Stewart (DMS 7989)

Attorneys for Defendants

61 Broadway, 18th Floor

New York, New York 10006

(212) 487-9700

Our File No.: 117-13119-D-DMS/ODR

TO: (See Attached Affidavit)

Judge Berman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV X 02375

JOSE PEREZ AND ROSA PEREZ,

Plaintiffs,

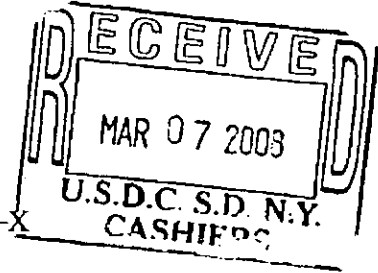
Index No.:

-against-

NOTICE OF REMOVAL

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
RENT A CAR, ROSEDALE DODGE, INC. and
BERGEN RENT A CAR, LLC,

Defendants.



**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

The Petitioners, GAETANO AMORE, FREEDOM RENTAL, FREEDOM RENT A CAR, ROSEDALE DODGE, INC. and BERGEN RENT A CAR, LLC, defendants in the above-captioned action, by their attorneys, WHITE FLEISCHNER & FINO LLP, respectfully shows the Court:

1. This petitioners are defendants in the instant action.
2. The action was commenced by service of a Summons and Verified Complaint in the Supreme Court, State of New York, County of Bronx on or about October 9, 2007. (A copy of said Summons and Verified Complaint is attached hereto as "*Exhibit A*")
3. Concurrent with its Answer, the petitioner served a Demand for Relief on or about June 2, 2007. Plaintiff served its Response to Demand for Relief on or about February 12, 2008. Which was received by the undersigned on February 18, 2008 (Copies of said Demand for Relief and Response to Demand for Relief are attached hereto as "*Exhibit B*")

4. The plaintiff in the above-captioned action allegedly personal injuries as a result of an accident involving a forklift and occurring on or about December 27, 2004 on White Plains road at or near its intersection with Pelham Parkway, Bronx County, New York.

5. This Court has original jurisdiction of this civil action pursuant to 28 U.S.C. 1332 because there is complete diversity in the matter and the amount exceeds the sum of \$75,000.00 exclusive of interest and costs.

6. The defendant ANDRE GAETANO resides at 43 Industrial Avenue, Fairview, New Jersey 07022.

7. The defendant FREEDOM RENTAL d/b/a FREEDOM RENT A CAR is a New Jersey corporation with its principal place of business in the State of New Jersey.

8. Upon information and belief, plaintiffs JOSE PEREZ and ROSA PEREZ are and were at the time of the commencement of this action, citizens of the State of New York.

9. Upon information and belief, defendant ROSEDALE DODGE, INC., is a Minnesota corporation with its principal place of business in the State of Minnesota.

10. Upon information and belief defendant BERGEN RENT A CAR, LLC., is a New Jersey corporation with its principal place of business in the state of New Jersey.

11. The underlying controversy and every genuine issue of law and fact herein is wholly between a citizen of the State of New York and citizens of a state or territory other than New York.

WHEREFORE, petitioner prays that the instant action now pending before the Supreme Court in the State of New York, County of Bronx, be removed there from to the

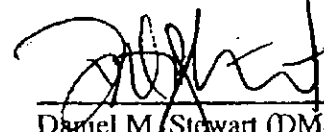
United States District Court of the Southern District of New York, and for such other and further relief as is just and proper.

Dated: New York, New York
March 4, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO, LLP

By:



Daniel M. Stewart (DMS 7989)

Attorneys for Defendants

61 Broadway, 18th Floor

New York, New York 10006

(212) 487-9700

Our File No.: 117-13119-D-DMS/ODR

TO: (See Attached Affidavit)

F

EXHIBIT

73028

NEW YORK SUPREME COURT - COUNTY OF BRONX
 PART 4

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF THE BRONX

JOSE PEREZ and ROSA PEREZ,

Plaintiffs,

-against-

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
 RENT A CAR, ROSEDALE DODGE, INC. and
 BERGEN RENT A CAR, L.L.C.,

Defendants.

Case Disposed ☐
 Settle Order ☐
 Schedule Appearance ☐

Index No.: 301602/07

DECISION/ORDER

Present:

Hon. Howard M. Sherman
 Justice

RECEIVED
 BRONX COUNTY CLERK'S OFFICE

APR 14 2008

The following papers numbered 1 read on this motion to extend time noticed on
 February 29, 2008 and duly submitted on the Motion Calendar of the Court.

	PAPERS NUMBERED
Notice of Motion- Exhibits [A-F] and Affidavits Annexed.	1

Upon the foregoing papers this motion by plaintiffs for an order extending the time in which to serve defendant Gaetano Amore pursuant to CPLR § 306-b and for an order pursuant to CPLR § 308(5) directing the manner of service to the summons and complaint upon defendant Amore, submitted without opposition, is granted as set forth below.

Plaintiff Jose Perez is seeking damages for personal injuries allegedly sustained in a motor vehicle accident that occurred on December 27, 2004 on White Plains Road and Pelham Parkway in Bronx County. [Plaintiff Rosa Perez interposes a derivative claim]. Jose Perez was the driver of one automobile and Gaetano Amore was the other driver in the two-car collision.

This action was commenced in October 2007 and issue was joined with service of defendants' answer in January 2008. Among the fourteen affirmative defenses raised was lack of personal jurisdiction.

Plaintiff's motion seeks an extension of time in which to serve the individual defendant as attempts to effect service upon him at the address designated on the police

report (MV-104) of the accident, have proven unsuccessful. Plaintiffs seek leave to serve the defendant through either his attorney or the insurer of the motor vehicle.

The moving papers establish reasonably diligent efforts to make timely service as defendant at the address on the police report, with both the USPS check and the process server's actual attempt revealed that defendant was unknown at the industrial location. Accordingly, plaintiffs have shown sufficient good cause for relief pursuant to CPLR § 308-b.

In addition, plaintiffs have established a basis for resort to CPLR 308(5) service at the only address provided by the defendant driver, appears unavailing. It is to be noted that the motor vehicle defendant was driving at the time of the accident appears to have had a "DPL" license plate.

Accordingly, it is


ORDERED that the plaintiffs' motion be and hereby is granted in its entirety and it is

FURTHER ORDERED that upon good cause shown and there being no opposition thereto, that the time in which to serve the defendant GAETANO AMORE be and hereby is extended for a period of thirty (30) days from the date of this order and it is

FURTHER ORDERED that sufficient cause appearing, and no opposition thereto, personal service upon White, Fleischer & Fino, LLP, 61 Broadway, 18th floor, New York, New York 10006 on or before thirty (30) days from the date of this order be deemed good and sufficient service.

This constitutes the decision and order of this court.

Dated: April 3, 2008
Bronx, New York.


Hon. Howard H. Sherman
J.S.C.

RECEIVED
BRONX COUNTY CLERK'S OFFICE

APR 14 2008

PAD - NO FEE

G

EXHIBIT

WHITE FLEISCHNER & FINO, LLP61 BROADWAY, NEW YORK, NY 10006
T212.487.9700 F212.487.9777 WWW.WFF-LAW.COM

April 28, 2008

VIA ELECTRONIC FILING

Hon. Richard M. Berman
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Perez, Jose and Rosa v. Gaetano Amore, Freedom Rental, Freedom Rent A Car, Rosedale Dodge, Inc. and Bergen Rent A Car, LLC
Insured: Freedom Rentals LLC
Index No.: 08-CV-2375 (RMB)
Our File No.: 117-13119-D-DMS/ODR
Handling Attorneys: Daniel M. Stewart

Honorable Sir:

This office represents all defendants in this matter. We have only partial opposition to plaintiff's Motion to Extend Time to serve the defendant-lessee Gaetano Amore.

This office represents Freedom Rental, Freedom Rent A Car, Rosedale Dodge, Inc. and Bergen Rent A Car, LLC pursuant to a contract of insurance. As co-defendant Amore simply rented a vehicle from Freedom Rent A Car, under the provisions of 49 USC 30106, that policy of insurance is also required to defend Amore only up to the minimum financial limits of the policy as defined by New Jersey State law.

This office is in no better position to locate Mr. Amore than plaintiff's counsel. The only records of Mr. Amore's whereabouts are his name and drivers' license number, the same information available to plaintiff. Service upon this office is no more likely to result in notification to Mr. Amore than any of the attempts put forth by plaintiff. As such, defendants oppose that portion of plaintiff's application seeking to satisfy service on Mr. Amore via service on our office.

A NEW YORK LIMITED LIABILITY PARTNERSHIP

HOLMDEL, NEW JERSEY • WHITE PLAINS, NEW YORK • GARDEN CITY, NEW YORK
PHILADELPHIA, PENNSYLVANIA • BOCA RATON, FLORIDA
LONDON, ENGLAND

We will appear as scheduled tomorrow morning, April 29, 2008, at 9:15A.M.

Very truly yours,

WHITE FLEISCHNER & FINO, LLP

Daniel M. Stewart

Daniel M. Stewart (DS 7989)
dstewart@wff-law.com

DMS/jhr
cc:

Via Facsimile (845) 562-3492
Eleanor L. Polimeni, Esq.
JACOBY & MEYERS, LLP
c/o Processing Center
436 Robinson Avenue
Newburgh, New York 12350

H

EXHIBIT

Jacoby & Meyers^{LLP}

Gail Koff, P.C., Founding Partner (NY)
 Andrew G. Finkelstein, P.C. (NY & NJ)
 Joel S. Finkelstein, P.C. (NY, NJ, MA & FL)
 Kenneth L. Oliver, P.C. (NY)
 Steven G. Davis (NY & PA)
 Michael Feldman (NY & NJ)
 Michael Finkelstein (NY)
 Cynthia M. Maurer (NY & NJ)

Raye D. Futerias (NJ)
 Kenneth Cohen (NJ)
 Joel A. Heback (NY & Israel)

Undá Armeti-Epstein (NY)
 John F. Dowd (NY & CT)
 David Akerib (NY)
 Frances M. Bova (NY & NJ)
 Mark B. Hudoba (NY)
 Kenneth G. Bartlett (CT & NJ)
 Gustavo W. Alzugaray (NY & NJ)
 Robert E. Bonero (NY)
 Marc S. Becker (NY)

Of Counsel
 George M. Lavy (NY)
 Ronald Rosenkranz (NY)
 Steven H. Cohen (NY)
 Francis J. Navarra (NY)
 Andrew J. Genna, LL.M. (NY & PA)
 Thomas C. Yano (NY)
 Kenneth B. Fromson (NY, NJ & PA)
 Joel Bossom (NY)
 Steven P. Shultz (NY & MA)
 Nancy Y. Morgan (NY, NJ & PA)

Steven Lim (NY)
 Duncan W. Clark (NY)
 Robert J. Camera (NY & NJ)
 George A. Kohz, Znd (NY & MA)
 Terry D. Homer (NY)
 Andrew L. Spitz (NY)
 James W. Shuttlesworth, III (NY)
 Lawrence D. Ussauer (NY)
 Julio E. Urrutia (NY)
 Victoria Job Lighcap (NY & MA)
 Thomas J. Prond (NY)

Edward M. Stevas (NY)
 Christopher T. Millman (NY)
 Silvia Fermanian (NY)
 Ann R. Johnson (NY & CT)
 Kristine W. Cahill (NY & CT)
 Kara L. Campbell (NY & CT)
 Mario M. DuSault (NY)
 Melody A. Gregory (NY & CT)
 David E. Gross (NY & NJ)
 Elizabeth A. Wolff (NY & MA)

(800) 890-3090

Fax: (845) 562-3492

www.jmlawyer.com

REFER TO OUR FILE #: 73028-02/db

September 26, 2007

Postmaster:

Fairview, New Jersey 07022

Please furnish the new address or the name and street address (if a boxholder) for the following:

GAETANO AMORE
 43 Industrial Avenue
 Fairview, New Jersey 07022

1. Capacity of requestor (e.g., process server, attorney, party representing himself) Attorneys - Finkelstein & Partners, LLP
2. Statute or regulation that empowers me to serve process (not required when requestor is an attorney or a party action pro se - except a corporation action pro se must cite statute)
3. The names of all known parties to the litigation: Perez v. Amore, et al.
- The court in which the case has been or will be heard: Supreme Court, Bronx County.
5. The docket or other identifying number if one has been issued: An index number has not been issued.
6. The capacity in which the individual is to be served (e.g. defendant or witness): Defendant

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in connection with actual or prospective litigation.

Jacoby & Meyers/db
 JACOBY & MEYERS, LLP

C/O Processing Center
 436 Robinson Avenue
 Newburgh, NY 12550

Good as addressed

File #73028-02/db

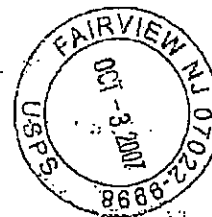
☒ Not known at address given

☐ Moved, left no forwarding address

☐ No such address

☐ No change of address order on file

☐ NEW ADDRESS OR BOXHOLDER'S NAME AND STREET ADDRESS:



73028-02

24/7 Search and Technical Assistance 1.800.543.6862

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Last Name	First Name	Middle Name	SSN	
GAETANO	AMORE			
Street Address	City	State	Zip	County
	FAIRVIEW	NJ		
Phone	DOB	Age Range	Radius	R
				7:

☐ Search for other possible name spellings ☐ Include Bankruptcies (Click For Prices)

Output Type: ☒ Formatted HTML ☐ Cut and Paste / Printer Friendly Text (No Reports)

Important: The Public Records and commercially available data sources used in this system have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

No records found.

Person Search

73028-02

24/7 Search and Technical Assistance 1.800.543.6862

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Last Name	First Name	Middle Name	SSN	
GAETANO	AMORE			
Street Address	City	State	Zip	County
		NJ		
Phone	DOB	Age Range	Radius	8
				7:

☐ Search for other possible name spellings ☐ Include Bankruptcies (Click For Prices)

Output Type: ☒ Formatted HTML ☐ Cut and Paste / Printer Friendly Text (No Reports)

Important: The Public Records and commercially available data sources used in this system have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State

No records found.

AFFIDAVIT OF ATTEMPTED SERVICE

73028-02

STATE OF NEW YORK

COUNTY OF BRONX

JOSE PEREZ and ROSA PEREZ,

vs.

GAETANO AMORE, FREEDOM RENTAL, et al.,

Index No: 301602/07

Filed On: 10/09/07

STATE OF NEW JERSEY

SS:

COUNTY OF PASSIAC

PETER FELDMAN

the undersigned am and was on the dates herein mentioned, over the age of eighteen years, a resident of the State of New Jersey and not a party to this action. I received the within

SUMMONS AND COMPLAINT

for service on GAETANO AMORE and that after due search, careful inquiry and diligent attempts at the ☐ Dwelling House ☐ Usual Place of Abode ☒ Place of Business, I have been unable to make delivery of said process on the within named defendant/witness.

I further state that I attempted to serve the within process on the following dates and times indicated:

Date	Time	Place
1/30/08	9:00AM	43 INDUSTRIAL AVE., FAIRVIEW, NEW JERSEY

PROCESS IS BEING RETURNED WITHOUT SERVICE FOR THE FOLLOWING REASONS:

DEPONENT ATTEMPTED SERVICE AT GIVEN ADDRESS AND UPON ARRIVAL FOUND SAID ADDRESS TO BE A COMPANY CALLED "EPI COMPANY." DEPONENT SPOKE TO WORKERS AT EPI COMPANY WHO INFORMED HIM THAT THE DEFENDANT WAS NOT KNOWN TO THEM. DEPONENT SPOKE TO NEIGHBORS AND NO INFORMATION WAS OBTAINED. NO LOCAL LISTINGS WERE FOUND.

Sworn to before me on this

1ST day of FEBRUARY, 2008

NADINE PASERCHIA
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 12/27/2009

PETER FELDMAN 797824

I

EXHIBIT

dante

THIS BUSINESS IS LICENSED BY THE NEW YORK STATE
DEPT. OF STATE, DIVISION OF LICENSING SERVICES

DANTE INVESTIGATORS

MAILING ADDRESS:

605 SADDLE RIVER RD., STE. 165
FAIR LAWN, NJ 07410
TOLL FREE: (800) 346-8242
FAX: (800) 825-8276

CORPORATE ADDRESS:

295 GREENWICH ST., STE. 284
NEW YORK, NY 10007
TEL: (212) 747-1510

RANDY LIEBMAN
PRESIDENT

LICENSED & BONDED
NEW YORK, NEW JERSEY

April 09, 2008

Finkelstein & Partners LLP
Att: Eleanor POLIMENI, Esq.
436 Robinson Ave., @ I-84
Newburgh, NY 12550

ORIGINAL!!

Re: PEREZ, Jose
Dante #: 032708 F&P
F&P #: 73028-02

INVOICE

FED ID#: 13-3613141

REMIT PAYMENT: Dante Investigators, # 165,
605 Saddle River Rd., Fair Lawn, NJ 07410

Professional Service.....	\$ 635.00*
NYS Sales Tax.....(.08375%).....	\$ 53.18
Expenses.....	\$ 62.00+
Total	\$ 750.43
Retainer	- 750.00
Balance	\$ z-e-r-o

- ATTEMPT LOCATE D-DRIVER
+ databases-DMV-DOCs-phone-fax

COMMITMENT TO EXCELLENCE

Established in 1964

dante

THIS BUSINESS IS LICENSED BY THE NEW YORK STATE
DEPT. OF STATE, DIVISION OF LICENSING SERVICES

DANTE INVESTIGATORS

MAILING ADDRESS:

605 SADDLE RIVER RD., STE. 165
FAIR LAWN, NJ 07410
TOLL FREE: (800) 346-8242
FAX: (800) 825-8276

CORPORATE ADDRESS:

295 GREENWICH ST., STE. 284
NEW YORK, NY 10007
TEL: (212) 747-1510

RANDY LIEBMANN
PRESIDENT

LICENSED & BONDED
NEW YORK, NEW JERSEY

April 09, 2008

Finkelstein & Partners LLP
Att: Eleanor POLIMENI, Esq.
436 Robinson Ave., @ I-84
Newburgh, NY 12550

Re: PEREZ, Jose
Dante #: 032708 F&P
F&P #: 73028-02

Dear Ms. Polimeni:

Pursuant to instructions we provided PRE-trial assistance.

ASSIGNMENT: We were to locate the defendant rental vehicle operator with reference to the 12-2004 MV accident in the Bronx.

BACKGROUND: The date-time of accident was on 12-27-2004 (Mo) about 1053 AM. The location was at-near the intersection of White Plains Road and Pelham Parkway. The claimant operated the host vehicle (1993 Dodge suburban) east on Pelham Parkway. The defendant vehicle (suburban) headed north on White Plains Road. The operator apparently was distracted and cut off the host vehicle. The host vehicle front passenger bumper T-boned the defendant vehicle front driver fender. The defendant vehicle was a rental. The operator whereabouts is unknown. The police report reflects an international driver license. The address for him (as listed on same) proved to be for a warehouse in an industrial area in Bergen County (NJ).

COMMITMENT TO EXCELLENCE

Established in 1964

Re: PEREZ, Jose

Dante #: 032708 F&P

F&P #: 73028-02

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D-DRIVER - GAETANO AMORE

-BIO/PEDIGREE data: His legal name is listed as Gaetano AMORE. His date of birth is 3-11-1973. His last known address is 43 Industrial Ave., Fairview, NJ 07022. He has an international driver license # of NA3644679J.

LOCATION ATTEMPT: We pursued the d-driver. We searched using his given name and variations. There was NO record found for him in any databases. Such include nationwide, state and local public and private databases. We searched DMV, SS#, criminal, prison, litigation, immigration. Also, we contacted local, state and Federal police agencies. NONE had any record for the subject. Also, we contacted the d-vehicle rental company and canvassed the shared and adjoining warehouses.

-RENTAL AGENCY: The rental company knew of the claimant and accident. They advised that the claimant was a repeat customer. He rented a van for transport and sale of leather clothing and goods. He always paid in cash. The rental company since was sold but some of the same personnel work there. The rental records for the d-vehicle were long destroyed.

-LANDLORDS: We developed the current and former landlords at the 43 Industrial Ave address. The current landlord took possession AFTER the subject accident. The FORMER landlord confirms that he rented the storage warehouse to men of Italian descent. It was a cash deal on a month-to-month verbal lease. The tenant was an importer of leather clothing and goods from Italy. The space was used for storage of same. The landlord remembered company names including NAPLES and-or STILE ITALIANO. The contact persons were GIUSEPPE and LUIGI. The approximate dates are 2004-2005. They left without any notice. They still owe the former landlord \$5K for two+ months back rent.

Re: PEREZ, Jose
Dante #: 032708 F&P
F&P #: 73028-02
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- TENANTS: We identified the tenant companies and principals. The corporate entity names are NAPLES ENTERPRISES, INC., and STILE ITALIANO IMPORTS, INC. The corporate principals of same are Guiseppe ALFANO and Luigi SENO, respectively. We attempted but were not able to track them. They were there less than one year.

-CANVASS: We conducted a limited canvass from among shared space and neighboring warehouse tenants. A tenant in a neighboring warehouse advises that a Federal or State government agency seized all the leather clothing and goods from the warehouse. He did not know which governmental agency was involved. A sign was posted on the front door advising of same. Local police confirm some type of action there (6-2005) but did not know any of the specifics. We were referred to the BERGEN COUNTY PROSECUTORs OFFICE which refused to provide any data.

-POST OFFICE: The postal carrier for the delivery route confirms BOTH entities being there a short time and long gone. He advised that same appeared to be a "shady operation". He always observed Italian clothing and large sums of cash on the table when he delivered mail there. No one there would give their names or sign for any mail deliveries. They companies and personnel disappeared without any trace. There was no forwarding addresses listed. Any mail was returned to the sender.

FOOTNOTE: We apprised YOUR office of the search status. We since halted our pursuit of the subject D-driver as per (EMAIL) directive from YOUR office. We close our file accordingly.

Very truly yours,

Randy Liebmann

RL: me
Enc.

NYS DMV

3-31-2008

DRIVER HISTORY SEARCH:

SEARCH ARGUMENT: AMORE, GAETANO

RESULT: NO RECORD FOUND.



New Jersey State Business Gateway Service

Corporate and Business Information Reporting

Business Entity Status Report

Printing Instructions: Open your Browser's Page Setup menu and set your page margins to 0.25". Use your Browser's Print option to print the report as seen on screen.

Saving Instructions: Save this file to your hard drive for later viewing by using the Browser's "Save As" function.

All available information is displayed.

Status Report For: NAPLES ENTERPRISES, INC.	
Business Name: NAPLES ENTERPRISES, INC.	Report Date: 03/28/2008
Business ID Number: 0300904002	Transaction Number: Sequence: 1260709: 1
Business Type: DOMESTIC PROFIT CORPORATION	
Status: REVOKED FOR NOT FILING ANNUAL REPORT FOR 2 CONSECUTIVE YEARS	
Filing Date: 05/12/2003	Home Jurisdiction: NJ
Status Change Date:	Stock Amount: 200
DOR Suspension Start Date: 12/16/2006	DOR Suspension End Date:
Tax Suspension Start Date:	Tax Suspension End Date:
Annual Report Month: 5	
Last Annual Report Filed:	
For Last Annual Report Paid Year:	
Incorporator: LENORE K HODES	
Agent: GIUSEPPE ALFANO	
Agent Address: 43 INDUSTRIAL AVE FAIRVIEW, NJ 07022	
Office Address Status: Undeliverable	
Main Business Address: 43 INDUSTRIAL AVE FAIRVIEW, NJ 07022	
Principal Business Address:	
Associated Names	
Name:	Type Description:
Officers/Directors/Members: Not Available	

Exit

Return to Main List

New Jersey State Business Gateway Service
Corporate and Business Information Reporting
Business Entity Status Report

Status Report For: NAPLES ENTERPRISES, INC.
Business Name: NAPLES ENTERPRISES, INC.
Report Date: 03/28/2008
Business ID Number: 0100904002
Transaction Number: Sequence: 1280709:1
Business Type: DOMESTIC PROFIT CORPORATION
Status: REVOKED
Reason: NOT FILING ANNUAL REPORT FOR 2 CONSECUTIVE YEARS
Filing Date: 05/12/2003 Home Jurisdiction: NJ
Status Change Date: Stock Amount: 200
DOR Suspension Start Date: 12/16/2006
DOR Suspension End Date:
Tax Suspension Start Date: Tax Suspension End Date:
Annual Report Month: 5
Last Annual Report Filed:
For Last Annual Report Paid Year:
Incorporator: LENORE K HODES ENTERPRISES, INC.
Agent: GIUSEPPE ALFANO
Agent Address: 43 INDUSTRIAL AVE., FAIRVIEW, NJ 07022
Office Address Status: Undeliverable
Main Business Address: 43 INDUSTRIAL AVE., FAIRVIEW, NJ 07022
Principal Business Address: NONE listed

Associated Names

Name: NONE listed
Type Description:

Officers/Directors/Members: Not Available

New Jersey State Business Gateway Service
Corporate and Business Information Reporting
Business Entity Status Report

Status Report For: STILE ITALIANO IMPORTS, INC.
Business Name: STILE ITALIANO IMPORTS, INC.
Report Date: 03/30/2008
Business ID Number: 0100576761
Transaction Number: Sequence: 1280947: 1
Business Type: DOMESTIC PROFIT CORPORATION
Status: REVOKED
Reason: NOT FILING ANNUAL REPORT FOR 2 CONSECUTIVE YEARS
Filing Date: 01/31/1994 Home Jurisdiction: NJ
Status Change Date: Stock Amount: 1000
DOR Suspension Start Date: 08/16/2006
DOR Suspension End Date:
Tax Suspension Start Date: Tax Suspension End Date:

Annual Report Month: 1
Last Annual Report Filed: 03/27/2002
For Last Annual Report Paid Year: 2001
Incorporator: LUIGI SENO
Agent: LUIGI SENO
Agent Address: 24 MYRTLE AVE., EDGEWATER, NJ 07020 - 0000
Office Address Status: Deliverable
Main Business Address: 24 MYRTLE AVE., EDGEWATER, NJ 07020
Principal Business Address:

Associated Names

Name: NONE Type Description: NONE

Officers/Directors/Members

1) Title: PRESIDENT
Name: LUIGI SENO
Address: 24 MYRTLE AVE., EDGEWATER, NJ 07020



New Jersey State Business Gateway Service

Corporate and Business Information Reporting

Business Entity Status Report

Printing Instructions: Open your Browser's Page Setup menu and set your page margins to 0.25". Use your Browser's Print option to print the report as seen on screen.

Saving Instructions: Save this file to your hard drive for later viewing by using the Browser's "Save As" function.

All available information is displayed.

Status Report For: STILE ITALIANO IMPORTS, INC.

Business Name: STILE ITALIANO IMPORTS, INC.

Report Date: 03/30/2008

Business ID Number: 0100576761

Transaction Number: Sequence: 1280947: 1

Business Type: DOMESTIC PROFIT CORPORATION

Status: REVOKED FOR NOT FILING ANNUAL REPORT FOR 2
CONSECUTIVE YEARS

Filing Date: 01/31/1994

Home Jurisdiction: NJ

Status Change Date:

Stock Amount: 1000

DOR Suspension Start Date: 08/16/2006

DOR Suspension End Date:

Tax Suspension Start Date:

Tax Suspension End Date:

Annual Report Month: 1

Last Annual Report Filed: 03/27/2002

For Last Annual Report Paid Year: 2001

Incorporator: LUIGI SENO

Agent: LUIGI SENO

Agent Address: 24 MYRTLE AVE

EDGEWATER, NJ 07020 - 0000

Office Address Status: Deliverable

Main Business Address: 24 MYRTLE AVE

EDGEWATER, NJ 07020

Principal Business Address:

Associated Names

Name:

Type Description:

Officers/Directors/Members

1) Title: PRESIDENT

Name: LUIGI SENO